IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.365 OF 2005
IN
APPEAL FROM ORDER NO.695 OF 2004

Prabhakar Mahadev Buddhe. ... Applicant.
Versus.
Madhukar Mahadev Buddhe and others. ... Respondents.

Shri N.V.Walavalkar with Shri Amit Borkar for the Applicant.

Shri Tejpal Ingle for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 14th March, 2005.

P.C.:

1. Rule. Shri Ingle waives serves for the Respondents Nos.1 to 8.

2. The Appellant is claiming to be in exclusive possession of the property described in paragraph 2 of the Civil Application. Shri Ingle appearing for the Respondents Nos.1 to 8 submitted that the parties are in joint possession of the suit properties.

3. The trial Court on prima-facie consideration of the material on record came to the conclusion that the Appellant has failed to prove that he is in exclusive possession. Shri Ingle submitted that the Respondents Nos.1 to 8 are jointly in possession of the suit properties along with the Appellant.

4. After having considered the rival submissions, I am of the view that at this stage it is not possible to come to the conclusion that the Appellant is in exclusive possession of the properties described in paragraph 2 of the application. However, in view of the contentions raised by Shri Ingle appearing for the Respondents Nos.1 to 8, the Appellant cannot be ousted.

5. Hence the Civil Application is disposed of by directing that till disposal of the appeal the Respondents Nos.1 to 8 are restrained from obstructing or interfering with the joint possession of the Appellant over the properties described in paragraph 2 of the Civil Application along with the Respondents Nos.1 to 8. No order as to costs.

6. It is made clear that pendency of the Appeal from Order in this Court will not operate as stay of the proceedings of the suit and the learned trial Judge is free to proceed with the hearing of the suit in accordance with the law.

Judge.